

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TIMOTHY DYKENS,)
Petitioner,)
v.) Civil Action No. 04-10544-NMG
PETER ALLEN,)
Respondent.)

)

**RESPONDENT'S MOTION TO DISMISS FOR FAILURE
TO EXHAUST STATE COURT REMEDIES**

The respondent, through counsel, moves to dismiss this petition seeking a writ of habeas corpus for failure to exhaust state court remedies. In support of his motion, the respondent states that the petitioner has presented this Court with a mixed petition, having failed to exhaust the claims contained in ground six seven of his petition. Because the petitioner has not yet provided the state's highest court with the first opportunity to pass on the merits of these claims, the petition should be dismissed. 28 U.S.C. § 2254(b)-(c). The respondent reserves the right to submit a memorandum raising additional defenses, if necessary.

In support of this motion, the respondent relies upon a memorandum of law, Answer, and Supplemental Answer filed with this Motion.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

/s/ Susanne G. Reardon
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December 29, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the attached document was served upon Timothy Dykens, pro se, MCI Cedar Junction, P.O. Box 100, South Walpole, MA 02071, by first class mail, postage pre-paid, on December 29, 2004.

/s/ Susanne G. Reardon
Susanne G. Reardon
Assistant Attorney General